IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2007

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THE HONOURABLE MR.JUSTICE S.MANIKUMAR

Writ Petition No.21624 of 2006

M.Srinivasan ... Petitioner

Vs.

1. State of Tamil Nadu,
rep. By its Secretary to Government,
Revenue Department,
Fort St. George, Madras-9.

2. The Commissioner of Revenue Administration,
Chepauk, Madras-5.

3. The Collector, Madras. ... Respondents

This petition came to be numbered by transfer of O.A.No.1910 of 1994 on the file of the Tamil Nadu State Administrative Tribunal praying for the issuance of a Writ of Certiorari, to call for the records pertaining to the order of the second respondent in proceedings Na.Ka.No.D5/2695/92, dated 09.12.1993 and set aside the same.

For petitioner : Mr.Dakshinamurthy

For respondents : Mrs.Lita Srinivasan
Government Advocate

O R D E R

The petitioner has sought a Writ of Certiorari to quash the proceedings dated 09.12.1993.

2. Brief facts leading to the Writ Petition are as follows:
The petitioner was served with a charge memo dated 6.6.1983 that he received a sum of Rs.250/- from one Mr.K.Loganathan, in violation to Rule 15(2) of the Tamil Nadu Civil Service (Conduct and Appeal)Rules. Following an enquiry, the Collector, by an order dated 13.11.1984 dropped the matter. Thereafter the Commissioner of Revenue Administration, Chennai, the second respondent herein issued a show-cause notice dated 27.10.1986 calling for an explanation as to why the petitioner should not be punished for the charges framed against him and the petitioner submitted a detailed explanation. However, the second respondent, by an order dated 30.11.1987, imposed punishment of stoppage of increment for three years with cumulative effect, not affecting his

pension. Against the order of the second respondent, an appeal was filed before the Government and in G.O(D).No.427, Revenue dated 31.12.1991, the Government set aside the order of the second respondent and remanded the matter on the ground that the show cause notice issued by the disciplinary authority did not indicate the penalty. On receipt of the said order, the Commissioner of Revenue Administration, Chepauk, Chennai, the second respondent herein, issued show cause notice and after considering the explanation, he restored the original penalty of stoppage of increment for a period of three years with cumulative effect. Being aggrieved by the penalty, the petitioner has preferred an Original Application before the Tamil Nadu State Administrative Tribunal, which has been transferred and renumbered as W.P.No.21624 of 2006.

3. It is the case of the petitioner that the findings of the enquiry officer that he has received a sum of Rs.250/-, is not supported by direct proof of evidence. It is the further case of the petitioner that during the relevant point of time, there was a drive for flag day collection that the Revenue Inspectors and other officials in the Revenue Department were compulsorily directed to collect as much as possible. When the petitioner after receiving the Flag Day Collection, was about to issue receipt, the Vigilance and Anti-Corruption Officials intervened and obtained his signature by force after reducing the matter in writing. Fortunately, when the phenolphthalein test was conducted and the report was negative. The petitioner has further submitted that the evidence of witnesses are contrary to each other and therefore the same ought not to have been relied on by the Department. The petitioner has also challenged the jurisdiction of the appellate authority in reviewing the matter after a period of six months, as time barred.

4. The respondents in their counter affidavit have submitted that the petitioner was arrested by the Deputy Superintendent of Police, Vigilance and Anti Corruption, Madras, at 8.25 P.M. on 24.4.1982 by launching a trap on the complaint given by one Thiru. K.Loganathan for demanding bribe for issuing a Solvency Certificate applied by Thiru P.S.Krishnan. Thereafter he was placed under suspension by the proceedings of the third respondent dated 27.4.1982. After examining all the witnesses and conducting an enquiry, the Director of Vigilance and Anti Corruption sent a report to the Government. In letter dated 29.3.1983, the Government sent Part-B of the report together with the statement of witnesses on the above trap to the disciplinary authority to take action against the petitioner. On receipt of the report, following charges were framed against the petitioner under Rule 17(b) of the Tamil Nadu Civil Service (Classification, Control and appeal) Rules on 6.6.1983.

Charge No.1:
That he has demanded and accepted Rs.250/- from Thiru R.Loganathan of No.2 Millors Lane, Kilpauk, Madras-10 as illegal gratification for recommending the issue of Solvency Certificate in the name of his (Lognathan) father P.S.Krishnan.
Charge No.2:
That he has violated Rule 15(2) of the Government Servants' Conduct Rules.

5. The respondents have further submitted that on receipt of the charge memo, the petitioner submitted his explanation on 19.1.1984. The Personnel Assistant (R) to the Collector, Madras was appointed as an Enquiry Officer to enquire into the charges dated 27.2.1984 and he submitted his report dated 22.5.1984 holding that the charges were proved beyond doubt. The Collector of Chennai, the third respondent, after considering the report of the Enquiry Officer, dropped further action vide proceedings dated 13.11.1984. A copy of the order of the 3rd respondent dated 13.11.1984 was sent to the Government on 24.11.1984 as required under the Rules. The Government in the confidential letter dated 21.7.1986, addressed to the Commissioner of Revenue Administration, Chepauk, Chennai-5 stated that the proceedings of the Collector of Chennai

dropping further action would be set aside and directed that the proceedings to be continued from the stage, at which the irregularities had crept in. The Government further directed the second respondent to review the case under Rule 36(1) of the Tamil Nadu Civil Service(Classification, Control and Appeal) Rules and report the action to the Government. Thereafter, the second respondent obtained explanation from the delinquent official and imposed a punishment of stoppage of increment for three years with cumulative effect inclusive of leave period spent on 30.1.1987.

6. The respondents have further submitted that on an appeal preferred by the delinquent/petitioner, the Government after consulting the Tamil Nadu Public Service Commission set aside the penalty imposed by the second respondent vide G.O.(D) 427 Revenue Department dated 31.12.1981 on the ground that the petitioner was not given any opportunity to give representation against the quantum of proposed punishment and therefore remitted the matter to the second respondent to proceed afresh from the stage where the flaw had crept in. Accordingly, the second respondent issued a show cause notice dated 11.6.1993 and after obtaining explanation, passed orders vide proceedings dated 9.12.1993, awarding the punishment of stoppage of increment for three years with cumulative effect, not affecting the pension of the petitioner.

7. As regards the contention of the petitioner that there was no positive evidence to show that he had received bribe for Rs.250/- and the amount was received only towards flag day collection, the respondents have submitted that one Mr.P.S.Krishnan residing at No.2, Millers Lane, Kilpauk, Madras-10 had applied for a Solvency Certificate to the tune of Rs.25,000/- to the Tahsildar, Purasawalkam-Perambur on 24.3.1982, and the application of the said P.S.Krishnan was forwarded to the petitioner on 31.3.1982 for enquiry and report. The petitioner inspected the property for the above purpose on 8.4.1992 and again on 17.4.1982 and completed the enquiry on 17.4.1982 itself. But he had not submitted the report to the Tahsildar, Purasawalkam-Perambur Taluk till 23.4.1982 and when Mr.Loganathan, son of P.S.Krishnan approached him for the report, he demanded Rs.250/- as bribe for recommending the case favourably. It is further submitted that the petitioner was caught red handed by the officials of the Vigilance and Anti Corruption Department and the averment made by the petitioner that the amount received from the complainant was only towards flag day collection is an after thought.
8. The respondents have further submitted that as per Rule 36 of the Tamil Nadu Civil Services (Classification, Control and Appeal)Rules the Government have got power to review the decision of the disciplinary Authority at any time and therefore the action of the Government in directing the disciplinary authority, the second respondent herein to review the decision of the disciplinary authority is not in excess of jurisdiction as contended by the petitioner.

9. Mr.Dhakshinamurthy, learned counsel for the petitioner strenuously argued that the impugned proceedings of the second respondent, imposing a penalty of stoppage of increment for a period of three years with cumulative effect, affecting the petitioner's pension is liable to be set aside, on the sole ground that the penalty had been imposed on an erroneous exercise of power of review conferred on the appellate authority, which could be exercised only within the period of six months from the date of imposition of penalty. Referring to the date of penalty and orders of the appellate Authority as well as the Government, learned counsel for the petitioner further submitted that the appellate Authority had exceeded in his jurisdiction contrary to the provision of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules and therefore the whole proceedings is vitiated. According to him, when the Collector of Chennai, third respondent herein, dropped further action on 13.11.1984. The Commissioner of Revenue Administration, Chepauk, Chennai, the second respondent herein has no jurisdiction to reopen the disciplinary proceedings after two years and issue a show cause notice dated 27.10.1986, which is beyond six months period stipulated under the Rules and therefore, barred by limitation.

10. Learned cousnel for the petitioner further submitted that the amount alleged to have been received by the petitioner was only towards flag day collection and it was not gratification, as alleged by the respondents. He further submitted that when the phenolphthalein test proved negative and in the absence of any positive evidence to come to the conclusion that the petitioner received the said amount as bribe, the impugned order imposing punishment of stoppage of increment for a period of three years with cumulative effect, affecting pension is liable to be set aside.

11. Per contra, Mrs.Lita Srinivasan, learned Government Advocate, submitted that power of review conferred on the State Government can be exercised at any time and once a direction is issued by the Government to the Commissioner for Revenue Administration, Chennai, the second respondent herein, to review the action taken by the disciplinary authority is within the jurisdiction. As regards the merits of the case, she submitted that on a trap conducted by the Deputy Superintendent of Police, Vigilance and Anti-Corruption, the petitioner was caught red-handed, while accepting Rs.250/- for recommending the case of the complainant for issuance of Solvency Certificate and the findings recorded by the second respondent need not be interfered with by this Hon'ble Court.

12. Learned Government Advocate further submitted that the findings are on the basis of legally acceptable evidence and since there was preponderance of probability that the petitioner had indulged in corrupt practice, the same cannot be termed as perverse, warranting interference. She further submitted that punishment of stoppage of increment for three years is commensurate with the gravity of charges and therefore, this Court need not interfere with the quantum of punishment also.

13. Heard Mr.Dhakshinamurthi, learned counsel for the petitioner and Mrs.Lita Srinivasan, learned Government Advocate for the respondents.

14. The main question that arise for consideration in this Writ Petition is:
"Whether the action of the Commissioner for Revenue Administration, Chepauk, Chennai, the second respondent, in reviewing the orders passed by the disciplinary authority, third respondent herein, is valid or it is contrary to Rule 36(g) of the Tamil Nadu Ministerial Service Rules?

15. Before adverting to the facts of this case, it is relevant to extract Rule 36 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules (hereinafter referred to as "the Act"),
"36. "Suo-moto" revision of any orders by the appellate/higher authorities when no appeal is preferred:
** 36. REVISION- (1) Notwithstanding anything contained in these rule-
(i) the State Government; or
(ii) the head of the department directly under the State Government, in the case of a Government servant serving in a department or office under the control of such head of the department, or department, or
(iii) the appellate authority, other than the State Government, within six months of the date of the order proposed to be revised; or"
(iv) any other authority specified in this behalf by the State Government by a general or special order, and within such time as may be prescribed in such general or special order; may at any time, either on their or its own motion or otherwise call for the records of any inquiry and after consultation with the Tamil Nadu Public Service Commission, where such consultation is necessary and revise any order made under these rules, may.
(a) confirm, modify or set aside the order; or
(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty

where no penalty has been imposed; or
(c) remit the case to be authority which made the order or to any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case; or
(d) pass such other orders as they or it may deem fit;
Provided that no order imposing or enhancing any penalty shall be made by any revising authority unless the Government Servant concerned has been given a reasonable opportunity of making his representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (iv), (v)(c), (vi), (vii) of rule 8 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses, and if an inquiry under sub rule (b) of rule 17 has not already been held in the case no such penalty shall be imposed except after an inquiry in the manner laid down in the said sub rule (b)of rule 17 which shall be subject to the provisions of sub-rule (c) thereof, and except after consultation with the Tamil Nadu Public Service Commission, where such consultation is necessary:
Provided further that no power of revision shall be exercised by the head of the department, unless-
(i) the authority which made the order in an appeal, or
(ii) the authority to which an appeal would lie, where no appeal has been preferred, is subordinate to him.
(2) No proceeding for revision shall be commenced
(a) Where no appeal has been preferred, before the expiry of the period of limitation for an appeal, or
(b) Where an appeal has been preferred, before the disposal of such appeal.
(c) An application for revision shall be dealt with in the same manner as if it were an appeal under these rules. and"

16. A Division Bench of this Court in R.Krishnaswamy v. The Director General of Police, reported in 2005 (2) MLJ 353, considered the scope and extent of power of suo-moto review in a case arising out of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules. Rule 15 -A of the above rules deals with the power of review of the State Government/Appellate Authority/Head of Department and the same is extracted hereunder:
"15-A(1) Notwithstanding anything contained in these rules: (i) the State Government; or
(ii) the Head of Department directly under the State Government in the case of a Government Servant in a department or office, under the control of such Head of the Department; or
(iii) the appellate authority; within six months from the date of the order proposed to be reviewed; or
(iv) any other authority, specified in this behalf by the State Government by a general or special order, and within such time as may be prescribed in such general or special order may, at any time either on their or its own motion or otherwise, call for the records of any inquiry and review any order made under these rules, after consultation with the Tamil Nadu Public Service Commission, where such consultation with the Tamil Nadu Public Service Commission, where such consultation, if necessary and may,--

(a) confirm, modify or set aside the order; or
(b) confirm, reduce, enhance or set aside the 'penalty' imposed by the order, or impose any penalty where no penalty has been imposed; or
(c) remit the case to the authority which made the order or to any other authority, directing such authority to make further inquiry as it may consider proper in the circumstances of the case; or
(d) pass such other orders as it may deem fit:
Provided that no order imposing or enhancing any penalty such be made by any reviewing the authority unless the Government servant concerned has been given a reasonable opportunity of making representation against the penalty proposed. Where it is proposed to impose any of the penalties specified in Clause (d), (e)(3)(h)(i) and (j) of Rule 2 or to enhance the penalty imposed by

the order sought to be reviewed to any of the penalties specified in those Clause, no such penalty shall be imposed except after an inquiry in the manner laid down in Sub-rule (b) of Rule 3 and after giving a reasonable opportunity to the Government servant concerned of showing cause against the penalty proposed on the evidence adduced during the inquiry and except after consultation with the Tamil Nadu Public Service Commission, where such a consultation is necessary:
Provided further that no power of review shall be exercised by the Head of the Department, unless--
(i) the authority which made the order in an appeal, or
(ii) the authority to which an appeal would lie, where no appeal has been preferred, is subordinate to him.
(2) No proceeding for revision shall be commenced until after--
(i) the expiry of the period of limitation for an appeal; or
(ii) the disposal of the appeal, where any such appeal has been preferred:
(3) An application for review shall be dealt with in the same manner as if it were an appeal under these rules;
(4) No application for review shall be preferred more than once in respect of the same order;
Provided that members of the constabulary (Police Constables and Head Constables) shall be eligible to make one representation to the Government against orders of dismissal or removal from the service after exhausting the right of appeal;
Provided further that no application for review shall be entertain, if it has not been made within a period of six months from the date of receipt of the order on which such application for review is prescribed."

The contention raised before the Division Bench was that once the power of review was exercised by any one of the prescribed authorities, the other authority is precluded from further reviewing the matter. Rejecting the said contention, this Court at Paragraph 8, held as follows:
"An analysis of the abovesaid provision makes it clear that the power of review has been given to the State Government under Rule 15(1)(i) or the Head of the Department or the Appellate Authority or any other authority specified in this behalf by the State Government. So far as the appellate authority is concerned, as contemplated under Rule 15-A (1)(iii) such power is to be exercised within six months from the date of order proposed to be reviewed. So far as any specified authority contemplated under Rule 15-A(1)(iv) is concerned, such power is to be exercised within time as may be prescribed, and so far as the State Government or Head of the Department is concerned, such power can be exercised at any time. This power of review can be exercised by the concerned authority on its own motion, i.e., suo moto or otherwise. In other words, such power of review can also be exercised on the basis of an application, which is contemplated in Rule 15-A(3)..... A careful analysis makes it clear that so far as suo moto power is concerned, there is no prohibition for the higher authority to issue suo motu review proceedings. The only embargo is that if the review is based on any application, such applicant cannot have a further right of filing further application for review."

17. Rule 36 of the then Tamil Nadu Civil Service (Discipline and Control) Rules, is parimeteria with the corresponding provision, i.e., Section 15-A of the Tamil Nadu Police Subordinate Service Rules. As per the Rules, for exercise of suo-moto review, time is restricted upto six months in the case of the appellate authority and for the Heads of Department/State Government is concerned, there is no restriction in time to exercise the power of suo-moto review. In the case on hand, after examining all the witnesses and conducting a preliminary enquiry, the Director of Vigilance and Anti-Corruption had sent his report to the Government. On examination of relevant records together with the report and the statement of witnesses recorded by the Vigilance and Anti-corruption Department, the Government decided to take disciplinary action against the petitioner instead of launching prosecution. The initiation of the disciplinary proceedings was on the direction of the Government. When the District Collector, third respondent herein, dropped the action on the basis of the enquiry

report, he had sent a copy of his order dated 13.11.1984 to the Government as per the procedure and the Government, finding that there were certain irregularities in the conduct of the enquiry, directed the second respondent herein, to review the orders passed by the disciplinary authority and proceed from the stage where the defect has crept in.

18. It is explicit from Rule 36(1)(iv) of the Rules that the authorities specified in the Rules can either confirm, modify or set aside the order, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed. They can also remit the case to the appellate authority which made the order or to any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case.

19. In the case on hand, the Government on examination of the enquiry report and other materials, in stead of setting aside the order, remitted the matter to the second respondent to make further enquiry from the stage where the defects had crept in. It is to be noted that originally, the disciplinary proceedings were directed to be initiated only by the Government and therefore, the subsequent directions of the Government to review the earlier orders passed by the second respondent should be construed only as an exercise of the suo-moto power under Rule 36(1)(iv)(c) of the Rules and consequently, the directions issued to the second respondent to review the matter cannot be said to be arbitrary or contrary to the Rules. Following the decision of the Division Bench in R.Krishnaswamy 's case, the time limit applicable to the appellate authority cannot be applied to a case where the Government had though it fit to remand for continuation of the enquiry.

20. Now let we consider some of the decisions of the Supreme Court as to whether, the Tribunal/Court can re-appreciate the evidence and set aside the penalty on the ground of insufficiency of evidence to prove charges and the scope of the Judicial Review.

21. In Government of T.N. v. A.Rajapandian reported in 1995 (1) SCC 216, the Supreme Court, while considering the above issue, in Paragraphs 9 and 10, held as follows:

"9. This Court in Union of India v. Sardar Bahadur reported in 1972(4) SCC 618, held as under:
"A disciplinary proceeding is not a criminal trial. The standard of proof required is that of preponderance of probability and not proof beyond reasonable doubt. If the inference that Nand Kumar was a person beyond reasonable doubt. If the inference that Nand Kumar was a person likely to have official dealings, with the respondent was one which reasonable person would draw from the proved facts of the case, the High Court cannot sit as a Court of appeal over a decision based on it. Where there are some relevant materials which the authority has accepted and which materials may reasonably support the conclusion exercising its jurisdiction under Article 226 to review the materials and to arrive at an independent finding on the materials. If the enquiry has been properly held the question of adequacy of reliability of the evidence cannot be canvassed before the High Court."

10. In Union of India v. Parma Nanda reported in 1989 (2) SCC 177, this Court observed as under:
"We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its

own discretion for that of the authority."

22. In Rae Bareli Kshetriya Gramin Bank v. Bhola Nath Singh and others reported in 1997 (3) SCC 657, the Supreme Court at Paragraph 6 of the judgment, answered a question as to whether the High Court would be correct in law to appreciate the evidence, the manner in which the evidence was recorded and record a finding in that behalf. The Court held as follows:
"The judicial review is not akin to adjudication of the case on merits as an appellate authority. The High Court, in the proceedings under Article 226 does not act as an appellate authority but exercises within the limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice."

23. The Supreme Court in Commissioner and Secretary to the Government v. C.Shanmugam, reported in 1998(2) SCC 394, considered the case of compulsory retirement, which was interfered by the Tribunal on the ground of absence of evidence. The Apex Court, after dealing with the various judgments on the point and held that only in the absence of any evidence, i.e., no evidence or if there was any perversity, the Court can interfere. At Paragraph 2 of the judgment, the Supreme Court held as follows:
"It is seen from the order of the Tribunal that at the regular departmental enquiry held, the employees who were present at the time of the incident in the office on 02.08.1980 were examined and they all supported the charges (misbehaviour with the superior officer) levelled against the respondent/delinquent. The Tribunal on a re-appreciation of evidence, in judicial review, was of the view that the enquiry report based on such evidence cannot be totally accepted as free from bias and an order passed on such reports cannot be accepted as a fair and just one. Assailing this view of the Tribunal, the learned counsel appearing for the appellants brought to our notice three judgments of this Court reported as State of T.N. v. Subramaniam, Govt. Of T.N. v. A.Rajapandian and State of Haryana v. Rattan Singh. In State of T.N. v. Suibramaniam, a three-Judge Bench of this Court observed as follows: (SCC.pp.511-12, para 5)
"The only question is: Whether the Tribunal was right in its conclusion to appreciate the evidence to reach its own finding that the charge has not been proved. The Tribunal is not a Court of appeal. The power of judicial review of the High Court under Article 226 of the Constitution of India was taken away by the power under Article 323-A and invested the same in the Tribunal by the Central Administrative Tribunals Act. It is settled law that the Tribunal has only power of judicial review of the administrative action of the appellant on complaints relating to service conditions of employees. It is the exclusive domain of the disciplinary authority to consider the evidence on record and to record the findings whether the charge has been proved or not. It is equally settled law that technical rules of evidence have no application for the disciplinary proceedings and the authority is to consider the material on record. In judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the view of the Court or Tribunal. When the conclusion reached by the authority is based on evidence, Tribunal is devoid of power to re-appreciate the evidence and would (sic) come to its own conclusions on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence."

24. In Apparel Export Promotion Council v. A.K.Chopra reported in 1999 (1) SCC 759, the Supreme Court at Paragraphs 16 and 17 held as follows:
"16. The High Court appears to have overlooked the settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to

the appellate authority, the appellate authority has also the power/and jurisdiction to re-appreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an appellate authority over he factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty. Both the learned Single Judge and the Division Bench of the High Court, it appears, ignored the well-settled principle that even though judicial review of administrative action must remain flexible and its dimension not closed, yet the Court, in exercise of the power of judicial review, is not concerned with the correctness of the findings of the fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process. Lord Hailsham in Chief Constable of the North Wales Police v. Evans reported in 1982 (3) ALL. ER 141 HL observed:
"The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches, on a matter which it is authorised or enjoined by law to decide for itself, a conclusion which is correct in the eyes of the Court."
"17. Judicial review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the Court, while exercising the power of judicial review, must remain conscious of the fact that if the decision has been arrived at by the administrative authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the Court cannot substitute its judgment for that of the administrative authority on a matter which fell squarely within the sphere of jurisdiction of that authority."

25. The above position was reiterated in Commandant v. D.Paul reported in 1999 SCC (L&S) 789, and at Paragraphs 4 and 5 of the judgment, the Supreme Court held as follows:
"4. .....It is not the function of the Tribunal to review the decision and to arrive at an independent finding on the evidence and that if there be some legal evidence on which the findings can be based, the adequacy or the reliability of that evidence is not a matter which can be permitted to be canvassed before the Tribunal."
"5. ..... It is settled law that the Tribunal, while exercising its power of judicial review in respect of disciplinary action taken against the a government servant, cannot re-appreciate the evidence adduced to prove the charges in the disciplinary proceedings."

26. In High Court of Judicature at Bombay v. Shashikant S. Patil reported in 2000 (1) SCC 416, while considering the scope of Judicial Review of the decision of the Disciplinary Authority in exercise of powers under Article 226 of the Constitution of India, the Apex Court at Paragraph 16, held as follows:
"16. The Division Bench of the High Court seems to have approached the case as though it was an appeal against the order of administrative/disciplinary authority of the High Court. Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural

justice or in violation of statutory regulations prescribing the mode of such enquiry or if the decision of the authority is vitiated by consideration extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But we cannot overlook that the departmental authority (in this case the Disciplinary Committee of the High Court is the sole judge of the facts, if the enquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a Writ Petition filed under Article 226 of the Constitution."

27. In State of A.P. v. S.Sree Rama Rao reported in AIR 1963 SC 1723, the Supreme Court, considering the scope of the Judicial Review, held that,
"The High Court is not constituted in a proceeding under Article 226 of the Constitution as a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Whether there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a Writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence."

28. The above position was once again reiterated by the Supreme Court in Sub-Divisional Officer, Konch v. Maharaj Singh reported in 2003(9) SCC 191. In Paragraph 5 of the judgment, the Court held as follows,

"It has been stated by this Court on a number of occasion that the jurisdiction of the High Court under Article 226 is a supervisory one and not an appellate one, and as such the Court would not be justified in re-appreciating the evidence adduced in a disciplinary proceeding to alter the findings of the enquiring authority."

29. Coming to the case on hand, on the basis of evidence adduced before the Enquiry Officer and considering the material records, the disciplinary authority came to the conclusion that there was sufficient legal and acceptable evidence to prove that the petitioner had demanded and accepted the bribe for issuing solvency certificate.

30. Evidence let in by the witnesses during the course of enquiry, discussed by the Commissioner for Revenue Administration, Chennai, the second respondent is extracted hereunder:
"The acceptance of money from the complainant has not been disputed by the accused officer. The purpose for which the amount has been collected by the accused officer has been mentioned in two different occasions. At the time of trap, the accused Officer has not stated that the money was collected for the flag day. At the stage, he has stated that he accepted the money given by the complainant, foolishly. Now his argument is that the money was collected for Flag Day. The contentions of the delinquent that the money received by him was towards Flag day collection is only an afterthought. Further, the complainant at the day of trap on 24.04.1982, met the delinquent in the Taluk Office on two occasions, first at about 5.00p.m., and second at about 6.45 p.m. If the money received by the delinquent from the complainant was actually towards Flag day collections, then the delinquent may very well get the amount even in the Taluk Office at the first meeting with the complainant though some people were near him and the receipt for having received the amount may also be given at the same time. But, in this case, the delinquent received the money from the complainant only in the hotel which amply proves that he had received the amount only for his

personal benefits. Further, all the prosecution witnesses have proved the alleged acceptance of money. The Charges have been clearly proved beyond and doubt."

31. It is evident from the above findings that the contention of the delinquent/petitioner that the money received by him was towards Flag day collection is only an afterthought. If the petitioner had collected money for Flag Day collection, he could have received the money in the Office itself and having received the money outside the Office, there is no point in saying that he had collected the money only for the Flag Day Collection. Catena of judgments cited supra, consistently lay down the principle that High Court sitting under Article 226 of the Constitution of India, cannot review or reappreciate the evidence as an appellate authority and reverse the finding, unless the same is perverse or lacks evidence.

32. In the result, I do not find that the disciplinary authority has misdirected itself in coming to a wrong conclusion. There are no
S. MANIKUMAR, J.

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procedural irregularities or violations warranting interference. The Writ Petition is devoid of merits and the same is dismissed. No costs.

14.11.2007
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To
1. State of Tamil Nadu,
rep. By its Secretary to Government,
Revenue Department,
Fort St. George, Madras-9.

2. The Commissioner of Revenue Administration,
Chepauk, Madras-5.

3. The Collector, Madras.